

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311	
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF LEXINGTON, NORTH CAROLINA

These Comments are filed by City of Lexington, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, City of Lexington, North Carolina believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a "franchise" and our community has adopted a cable ordinance which operates in conjunction with the franchise agreement, the terms of which were negotiated with our cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

City of Lexington, North Carolina is a NC City with a population of 22,000. Our franchised cable providers are LEXCOM and Time Warner. Our community has negotiated cable franchises since the early 1980's.

Our Current Franchise

The City has two franchise agreements. We have an agreement with Time Warner began on November 4, 2003 and expires on July 30, 2013. We also have an

agreement with Lexington Telephone (LEXCOM) originated May 12, 1997 and expire July 30, 2013. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchises require the cable operator to pay a franchise fee to City of Lexington, North Carolina in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to community access

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Time Warner and LEXCOM, as a great community partner with community information services joined together and interconnected in the City of Lexington and provide a community access/education access to all of the City subscribers. The cable operators provided fiber optic connections from their headends to the City and provided all necessary equipment required to provide the channel. LEXCOM provided \$4000.00 to offset costs to interconnect.

Our franchise contains the following requirements regarding emergency alerts: All three operators and our local community agreed that the national system of alerts serves our communities, however in a dire emergency all have agreed to allow local officials to broadcast emergency messages. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We have a provision within the franchise to enforce the federal customer service standards. We require periodic reports necessary to insure compliance with the franchise agreement.

Our franchise contains the following reasonable build schedule for the cable operator: Build to 15 homes per mile with a cost share provision should there be less than 15 homes per mile. In our Community there is less density of homes therefore it is fair to the cable operator to build to 15 homes per mile, as this is economically feasible.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: LEXCOM and Time Warner have upgraded the cable system to provide, high speed internet, telephone and cable television service. Our agreement provides that all three operators maintain a state-of-the-art system and is based on economical feasibility of any upgrade.

Our franchise contains the following insurance and bonding requirements: Two million general liability, one million auto liability and a \$25,000 performance bond for Time Warner \$300,000 for LEXCOM. The higher performance bond was necessary as LEXCOM was overbuilding Time Warner.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to coordinate with other underground utilities and provide the City with plans to dig in the streets. There is no permit required however the City is responsible for traffic control and other public safety issues.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The City has the right to inspect any facet of construction of the cable system located within the City; has the right to audit franchise fees and books and records necessary to insure compliance with the franchise agreement; and has a penalty clause in which there is a formal appealable process, with cure notices and sufficient time to correct problems before penalties are assessed.

The Franchising Process

The cable system serving our community also serves the local municipalities within our County. In 1999-2003 our community worked together with Davidson County to coordinate the overbuild project of LEXCOM. This allowed the company to quickly obtain franchises in our communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once

the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The terms of the franchise agreement are controlling except if state or federal law overtakes any of the provision, then by mutual agreement we modify the franchise agreement. This is done by amendment to our franchise and NC statutes require the franchising authority to consider any changes at two meetings before adoption.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: In our community we abide by federal statute and offer the public an opportunity to comment on past and current performance by the cable operator, discuss any cable matter and have a voice in stating the cable related needs of the community through a public hearing process. The cable operator is in attendance and it is a great opportunity for the public to hear first hand future plans, current operations and to learn how local governments operate. NC statutes require that any franchise or change to a franchise be read and adopted at two regularly scheduled meeting of the franchising authority.

Competitive Cable Systems

Our community has been approached by a competitive provider to provide service.

- Granted a competitive franchise to LEXCOM, a cable overbuilder, in 1997 and that provider is now providing service in our community today. The Company constructed a cable system on the back of their telephone lines. We completed the negotiations within 90-days of the initial request under the general terms of the existing Time Warner agreement.
- Has not denied any provider the opportunity to serve in our community.
- Does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in City of Lexington. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

City of Lexington, North Carolina therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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